

From: Ricker, Monique T. EOP/USTR Monique_T_Ricker@ustr.eop.gov 
Subject: RE: FOIA Request (USTR-19-0150)
Date: March 4, 2019 at 6:41 PM
To: American Oversight FOIA foia@americanoversight.org
Cc: FN-USTR-FOIA FN-USTR-FOIA@ustr.eop.gov



Ms. Creighton,

This email is the final response of the Office of the United States Trade Representative (USTR) to Freedom of Information Act (FOIA) FY19-49 requesting all records reflecting communications between C. Boyden Gray or any person acting on his behalf, and USTR Robert Lighthizer, Jamieson Greer, Payne Griffin or any person acting on their behalf between January 20, 2017 and February 5, 2019.

After conducting an eDiscovery search of the files of Robert Lighthizer, Jamieson Greer, and G. Payne Griffin, as well as those of their confidential assistants/schedulers Abigail Bacak, Haley Dorval, and former employees Bridget Visconti and Billy Muran, we located four pages of responsive records which we are releasing in part. Please see attached. We redacted one signature and non-public contact information because we reasonably foresee that disclosure would harm an interest protected by FOIA Exemption 6.

This constitutes a complete response to your request. You may contact me or my colleague Melissa Keppel by email at FOIA@ustr.eop.gov or 202-395-3419 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may also administratively appeal by writing to: FOIA Office, GSD/RDF; ATTN: Janice Kaye, Anacostia Naval Annex, Bldg. 410/Door 123, 250 Murray Lane, S.W., Washington, D.C. 20509.

Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request. Both the letter and the envelope should be clearly marked: "Freedom of Information Act Appeal" and should include a reference to the FOIA Case File number listed above. Heightened security in force may delay mail delivery; therefore we suggest that you also email any such appeal to foia@ustr.eop.gov.

In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, where we searched for the records you requested.

Sincerely,
Monique

Monique T. Ricker
FOIA Program Manager/Attorney

FOIA Program Manager/Attorney

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON DC 20508

From: American Oversight FOIA <foia@americanoversight.org>
Sent: Monday, February 4, 2019 2:51 PM
To: FN-USTR-FOIA <FN-USTR-FOIA@ustr.eop.gov>
Subject: [EXTERNAL] FOIA Request (USTR-19-0150)

Dear FOIA Officer:

Please find attached and pasted below a request for records under the Freedom of Information Act.

Sincerely,

Clay M. Goode
Paralegal
American Oversight
foia@americanoversight.org
>www.americanoversight.org< | @weareoversight

FOIA: USTR-19-0150

February 4, 2019

VIA ELECTRONIC MAIL

USTR FOIA Office, GSD/RDF

Attn: Chief FOIA Officer, Janice Kaye

Office of the U.S. Trade Representative

Anacostia Naval Annex, Bldg. 410/Door 123,

250 Murray Lane SW

Washington, DC 20509

FOIA@ustr.eop.gov

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, American Oversight makes the following request for records. The records requested herein may reside in multiple components or offices within your agency. We ask that you coordinate this request across your agency in your role as the agency's FOIA contact.

Former White House Counsel and U.S. Ambassador to the European Union C. Boyden Gray has long been an influential force in conservative politics, on issues including judicial nominations, energy and environmental policy, and antitrust law. At the same time, he has been a prolific donor to Republican candidates and committees,^[1] including contributing hundreds of thousands of dollars to the Republican National Committee in the 2016 and 2018 election cycles.^[2]

The extent of Ambassador Gray's influence in the Trump administration is little known to the public, aside from small glimpses in the public record. For instance, emails released to American Oversight through a FOIA request show that Ambassador Gray communicated with Environmental Protection Agency Chief of Staff Ryan Jackson in 2017 to set up a job interview with a recommended candidate. Jackson replied to thank Gray for his "consistent help."^[3] EPA calendars released to American Oversight show Ambassador Gray meeting with former Administrator Scott Pruitt^[4] and other high-level officials.^[5] According to lobbying reports, the Illinois Corn Growers Association has paid Ambassador Gray and his colleagues \$310,000 since 2018 to lobby the EPA, the Department of Justice, the Department of Agriculture, the Department of Transportation, and the Office of Management and Budget on its behalf.^[6] According to calendars released to American Oversight, Education Secretary Betsy DeVos planned in March 2017 to attend a reception cohosted by Ambassador Gray to welcome Commerce Secretary Wilbur Ross and his wife to Washington.^[7] Ambassador Gray reportedly also attended the wedding of Treasury Secretary Steven Mnuchin.^[8] Current White House Staff Secretary Derek Lyons came to the administration after serving in Ambassador Gray's firm.^[9]

This request seeks to shed light on the role, if any, that this GOP donor is playing in shaping policy in the Trump administration.

Requested Records

American Oversight requests that your agency produce the following within twenty business days:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) C. Boyden Gray or any person acting on his behalf, and (b) any of the individuals listed below or any person acting on their behalf, such as an administrative assistant or scheduler.

- a) Robert Lighthizer
- b) Jamieson Greer
- c) G. Payne Griffin

Please provide all responsive records from January 20, 2017, through the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.[\[10\]](#) **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**[\[11\]](#)

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered your agency’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**[\[12\]](#) Furthermore, **agencies that have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files.** For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”[\[13\]](#) If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests

that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”^[14] Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”^[15] Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”^[16]

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.^[17] Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request.

American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, you are on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight hopes to decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's implementing regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to public understanding of those operations. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of activities of the government. The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how officials conduct the public's business. C. Boyden Gray has been a prolific donor to Republican candidates and committees.^[18] The public has a profound interest in knowing who is seeking to influence policy decisions in the government and what level of access those individuals have been given. In particular, the public deserves to know whether wealthy donors are being given an outsized role in policymaking. The public therefore deserves to know the extent to which government officials have been communicating with Mr. Gray, and on what issues.

This request is primarily and fundamentally not for commercial purposes, but rather the primary interest is in public disclosure of responsive records. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.^[19] American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,^[20] American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.^[21] As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.^[22]

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Sara Creighton at foia@americanoversight.org or (202) 869-5245. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

Austin R. Evers

Executive Director

American Oversight

[1] See Hanna Rosin, *Shades of Gray*, THE NEW REPUBLIC, Apr. 14, 1997, available at <https://web.archive.org/web/20070609173538/http://www.mediatransparency.org/reprints/graytnr.html><

[2] Campaign contribution data available at FEC.org.

[3] *EPA June 2017 Emails Between Top Staffers and Outside Individuals*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/epa-june-2017-emails-between-top-staffers-and-outside-individuals><.

[4] *EPA Administrator Scott Pruitt's Calendars*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/epa-administrator-scott-pruitts-calendars><.

[5] *Id.*

[6] Lobbying reports available at https://www.senate.gov/legislative/Public_Disclosure/LDA_reports.htm.

[7] Education Secretary Betsy DeVos and Senior Staff Calendars from January-July 2017, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/secretary-education-betsy-devos-calendars>.

[8] Darren Samuelsohn et al., *Trump Joins A-list Crowd at Treasury Secretary Steven Mnuchin's Wedding*, POLITICO, June 24, 2017, <https://www.politico.com/story/2017/06/24/trump-mnuchin-wedding-celebrities-239929>.

[9] LinkedIn profile for Derek Lyons, available at <https://www.linkedin.com/in/derek-lyons-25626667>.

[10] See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149—50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955—56 (D.C. Cir. 2016).

[11] See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

[12] Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

[13] FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

[14] *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

[15] *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223—24 (D.C. Cir. 1987) (emphasis in original).

[16] *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

[17] *Mead Data Central*, 566 F.2d at 261.

[18] *See supra* notes 1, 2.

[19] American Oversight currently has approximately 12,100 page likes on Facebook and 49,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Jan. 31, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Jan. 31, 2019).

[20] *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

[21] *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

[22] *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.



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RE: Phone Call with Amb. C. Boyden Gray

From: Bethany Davis <bethany@boydengrayassociates.com>
To: "Bacak, Abigail R. EOP/USTR" <abigail.r.bacak@ustr.eop.gov>
Date: Wed, 07 Jun 2017 17:00:33 -0400

Thank you for letting us know.

Bethany Davis Horyn | BOYDEN GRAY & ASSOCIATES
801 17th ST NW, Suite 350
Washington, DC 20006
Tel: (b) (6) Fax: (b) (6)

-----Original Message-----

From: Bacak, Abigail R. EOP/USTR [mailto:Abigail.R.Bacak@ustr.eop.gov]
Sent: Wednesday, June 07, 2017 5:00 PM
To: Bethany Davis <bethany@boydengrayassociates.com>
Subject: RE: Phone Call with Amb. C. Boyden Gray

Bethany--

The Ambassador is overseas on official business until the afternoon of the 9th.

Thanks,
Abby

-----Original Message-----

From: Bethany Davis [mailto:bethany@boydengrayassociates.com]
Sent: Friday, June 2, 2017 11:13 AM
To: Bacak, Abigail R. EOP/USTR <Abigail.R.Bacak@ustr.eop.gov>
Subject: RE: Phone Call with Amb. C. Boyden Gray

Dear Abigail,

My apologies for the confusion. The call request was not for June 9; that is the day of the event he wanted to discuss. He was hoping for a call between now and then.

Attached is an invitation the Ambassador should have received from the Atlantic Council.

Thank you,

Bethany Davis Horyn | BOYDEN GRAY & ASSOCIATES
801 17th ST NW, Suite 350
Washington, DC 20006
Tel: (b) (6) Fax: (b) (6)

-----Original Message-----

From: Bacak, Abigail R. EOP/USTR [mailto:Abigail.R.Bacak@ustr.eop.gov]
Sent: Friday, June 02, 2017 11:10 AM
To: Bethany Davis <bethany@boydengrayassociates.com>
Subject: RE: Phone Call with Amb. C. Boyden Gray

Hi Bethany--

The Ambassador is unable to do a call on Friday, June 9th.

Thank you,
Abby Bacak

-----Original Message-----

From: Bethany Davis [mailto:bethany@boydengrayassociates.com]

Sent: Wednesday, May 31, 2017 11:03 AM

To: Mullaney, Dan D. EOP/USTR <Daniel_Mullaney@ustr.eop.gov>; Reif, Timothy M. EOP/USTR <Timothy_Reif@ustr.eop.gov>; FN-USTR-SCHEDULING <USTR_SCHEDULING@ustr.eop.gov>

Subject: Phone Call with Amb. C. Boyden Gray

Dear Mr. Lighthizer,

Ambassador C. Boyden Gray is hoping to have a phone call with Mr. Lighthizer regarding an upcoming Atlantic Council event - which he sits on the board of - on Friday, June 9.

Thank you,

Bethany Davis Horyn | BOYDEN GRAY & ASSOCIATES

801 17th ST NW, Suite 350

Washington, DC 20006

Tel: (b) (6) Fax: (b) (6)



Ambassador Robert Lighthizer
United States Trade Representative
Office of the US Trade Representative

Dear Ambassador Lighthizer,

Firstly, on behalf of the Atlantic Council, I would like to extend my congratulations on your recent confirmation as the new US Trade Representative and wish you every success in your new role.

I am writing to invite you to the 2017 'Club of Three and America' plenary meeting, a small one-day conference with senior public and private sector decision-makers and experts from three of America's most important European allies – France, Germany, and the United Kingdom. We would be honored to have you share your perspective and insights. The event is being co-hosted by the Club of Three and the Atlantic Council and will take place on **Friday, June 9, 2017 at the Atlantic Council in Washington D.C.**

At a time of continued uncertainty in transatlantic relations, the discussions will focus on how the new US Administration and Europe – and the three key allies in particular – can develop a constructive, forward-looking agenda and what that agenda might look like. As you will see from the **attached draft outline program**, the event will cover issues related to the global economy and trade, security and defence, and energy policy.

The meeting will involve some 60 business leaders, politicians, and senior figures from academia and the media in the United States and the three countries. Confirmed participants include **Sir Malcolm Rifkind**, former UK foreign secretary, and **Norbert Roettgen MdB**, chairman of the Foreign Affairs Committee of the German Bundestag.

Founded in the 1990s by the publisher George Weidenfeld, the Club of Three is a Franco-British-German leadership network that provides an informal platform for cross-sector thinking on the major challenges that Europe is facing.

As US Trade Representative, we would be delighted to have you join us and invite you to a keynote or conversation for our second session on economy and trade beginning 11:00 a.m. We would be happy to work out the exact format for your participation with you and your staff. If you prefer to speak at a different time during the program, we are also open to other suggestions.

The program will start at the Atlantic Council on the Friday morning at around 9:00 a.m., and includes an off-site lunch and evening reception at the residence of the British Ambassador. The following day, a brunch will be hosted by the French Ambassador at his residence.

Continued

I very much hope that you will be able to join us for the discussions on June 9 and share your insights at a critical time for the Atlantic alliance. Jörn Fleck, Associate Director of the Future Europe Initiative (b) (6) [@atlanticcouncil.org](mailto:(b) (6)@atlanticcouncil.org)) would be happy to discuss this invitation in greater detail with you or your staff.

Best regards,

(b) (6)

Damon Wilson
Executive Director
Atlantic Council